IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 427 of 1999.

Date of decision: 7.3.2006.

State of H.P. ... Appellant

Versus

Purshotam Dass & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. J.S. Guleria, Law Officer.

For the respondents: Mr. J.R. Thakur, Advocate.

Deepak Gupta, J. (Oral):

This appeal by the State is directed against the judgment of the Chief Judicial Magistrate, Hamirpur, in a Criminal Case No. 51-II of 1994, decided on 10.6.1999, whereby he has acquitted all the 17 accused of having committed offences under Sections 147/149/427/430/506 I.P.C.

The prosecution case is that on 19.3.1994 at about 8.00 AM at Barnjar, Tappa Jassai, Tehsil Nadaun, the accused persons formed an unlawful assembly with the common object of uprooting the pipes and obstructing the flow of water to the land of Bagga Ram, complainant. It was further alleged that the accused not only uprooted the alkothene pipes but also uprooted the GI pipes going to the land of Bagga Ram and stopped the flow of water from the natural source to his land. It was

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

further alleged that when Bagga Ram and his family members i.e. Satya Devi, Basu Dev and Veena Devi objected, they were beaten up by the accused. The accused were summoned and pleaded not guilty. The prosecution examined nine witnesses in all.

It would be pertinent to mention here that the most important statements are of complainant Bagga Ram, Satya Devi and Basu Dev who are stated to have received injuries and in whose presence the alleged offences are alleged to have been committed. It is the admitted case of the parties that all the accused and the complainant and his family are co-villagers. They are well known to each other. Despite this, Bagga Ram, Satya Devi and Basu Dev have not named any of the accused as having committed the offences. No doubt, Bagga Ram in his statement states that 17 members of the village had cut and uprooted the water pipes, but he does not even name one of the persons who allegedly committed the act.

Another important point which has to be noted is that admittedly there was a civil dispute with regard to the rights in the water source between the villagers and Bagga Ram. From a perusal of Ext.D-2, it is apparent that on 1.2.1994 the villagers had filed a suit against Bagga Ram praying that he should be restrained from taking water or diverting its flow from the water channel/water stream to his own land. The defence of the complainant was that in fact he had been utilizing this water for the last 20 years. On 1.2.1994 the Court had granted interim injunction in favour of the villagers. On 16.3.1994 the Court had modified this order and directed both the parties to maintain status quo. Incident is stated to have taken place on 19.3.1994. In the written statement which was filed on or before 16.3.1994, the defendant (complainant) has

taken up the plea that the plaintiffs (accused) had already damaged the water pipe of the defendant. Obviously this written statement had been filed on or before 16.3.1994. Thereafter, the complaint was filed on 19.3.1994. Obviously the complaint was filed to obviate the order dated 16.3.1994. It is quite possible that the complaint was filed as a rebuff to the civil suit.

The learned trial Court on the basis of the evidence has come to the conclusion that none of the accused has been identified and further that the important witness i.e. PW Mansha Ram, Pradhan of the village has also not been examined. Keeping in view all the above facts and circumstances, the trial Court has acquitted the accused. I find no infirmity in the judgment of the trial Court. The appeal of the State is without merit and is dismissed. The bail bonds of the accused are discharged.

(Deepak Gupta),
Judge

March 7, 2006
(BSS)